

No. 10749

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United States  
Circuit Court of Appeals

VRL  
2389

For the Ninth Circuit.

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L. S. CASE, doing business as L. S. Case Company,  
and TRAVELERS INSURANCE COM-  
PANY, a corporation,

Appellants,

vs.

WARREN H. PILLSBURY, Deputy Commis-  
sion of the Thirteenth Compensation District  
under the Longshoremen's and Harbor Work-  
ers' Compensation Act, and DAVID M.  
YOUNG,

Appellees.

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Apostles on Appeal


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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division

FILED

MAY 25 1944

PAUL P. O'BRIEN,



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF PROCTORS

R. P. WISECARVER, ESQ.,

315 Montgomery Street,  
San Francisco, California.

Proctor for Libelants and Appellants.

FRANK J. HENNESSY, ESQ.,

United States Attorney,  
Northern District of California.

JAMES T. DAVIS, ESQ.,

Assistant United States Attorney,  
Northern District of California.  
Post Office Building,  
San Francisco, California.

Proctors for Respondents and Appellees.



In the United States District Court for the  
Northern District of California, Southern Division  
In Admiralty

No. 23795G

L. S. CASE, doing business as L. S. Case Company,  
and TRAVELERS INSURANCE COMPANY,  
a corporation,

Libelants,

vs.

WARREN H. PILLSBURY, Deputy Commis-  
sioner of United States Employees' Com-  
pensation Commission, for the 13th Compen-  
sation District, under the Longshoremen's and  
Harbor Workers' Compensation Act, and  
DAVID M. YOUNG,

Respondents.

**LIBEL FOR REVIEW OF COMPENSATION  
ORDER AND FOR INJUNCTION SUS-  
PENDING AND SETTING ASIDE AWARD  
UNDER LONGSHOREMEN'S AND HAR-  
BOR WORKERS' COMPENSATION ACT.**

[1\*]

To the Honorable, the Judges of the District Court  
of the United States in and for the Northern  
District of California, Northern Division, Sit-  
ting in Admiralty:

The libel of L. S. Case, doing business as L. S.  
Case Company, and Travelers Insurance Company,

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\*Page numbering appearing at foot of page of original certified  
Transcript of Record.



a corporation, against Respondents, Warren H. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission for the 13th Compensation District, and David M. Young, in a maritime action and petition for review of an amended compensation order, and for an injunction suspending and setting aside an award of compensation under the Longshoremen's and Harbor Workers' Compensation Act, respectfully alleges:

### I.

That the libelant, L. S. Case, at all of the times herein mentioned, was and now is doing business under the fictitious name of L. S. Case Company, and Travelers Insurance Company, at all the times herein mentioned, was and now is a corporation, and both of said libelants were lawfully carrying on business within the State of California, and within the 13th Compensation District, and within this District.

### II.

That the libelant, L. S. Case, doing business as L. S. Case Company, is now and at all times mentioned, was an employer within the provisions of the Longshoremen's and Harbor Workers' Compensation Act, hereinafter referred to as the Act.

### III.

That the libelant, Travelers Insurance Company is now and at all the times herein mentioned was, an insurance company licensed to insure employers against liability arising by reason of the provision

of said act, and was insurance carrier for the libelant, L. S. Case, doing business as L. S. Case Company, in accordance with the provisions of said Act on the date in question herein. [2]

#### IV.

That the respondent, Warren H. Pillsbury, at all the times herein mentioned was and now is the duly appointed, qualified and acting Deputy Commissioner of the United States Employees' Compensation Commission for the 13th Compensation District, under the provisions of said Act, with offices at San Francisco, California.

#### V.

That on October 1st, 1941, respondent David M. Young, while employed as a carpenter repairing the S.S. "West Portal" on the navigable waters of San Francisco Bay at Oakland, California, sustained a personal injury, occurring in the course of and arising out of his employment, when a foreign body entered his right eye, and resulted in the loss of 80% of the vision of said eye.

#### VI.

That workmen's compensation, pursuant to said Act, has been paid voluntarily for all temporary disability to the amount of \$503.57, and an award of one hundred and forty weeks compensation at \$25.00 a week, beginning as of February 19th, 1942, as and for the permanent partial disability of the loss of sight of said eye, was made by said Deputy Commissioner on February 12th, 1943, and is being

paid in accordance with the order contained in said award.

## VII.

That in addition to the foregoing award, respondent, Warren H. Pillsbury, Deputy Commissioner, did, on February 12th, 1943, make and enter his findings and order and award, as follows:

“That by reason of said injury claimant has sustained, in addition to said loss of sight, serious facial and head disfigurement consisting in a large white spot across the pupil of said eye resembling a cataract and some narrowing of the aperture between the upper and lower eyelids of said eye. That just and equitable compensation therefor is \$750.00, which is payable [3] forthwith;

Upon the foregoing facts the Deputy Commissioner makes the following:

## AWARD

That the employer, L. S. Case Company, and the insurance carrier, The Travelers Insurance Company, shall pay to the claimant compensation as follows:

(1) To claimant the sum of \$750.00 forthwith for serious facial and head disfigurement;

\* \* \*”

That the hearing before the said Deputy Commissioner was held on the 28th day of December, 1942, and the aforesaid compensation order and award for compensation was issued on the 12th day

of February, 1943; that a copy of the transcript of the proceedings, and exhibits at the hearing, are attached hereto as Exhibit "A", and a copy of the compensation order and award of compensation is also attached hereto as Exhibit "B", and by such reference said exhibits are made a part hereof as though fully set forth herein.

### VIII.

That said compensation order and award of compensation is not in accordance with law and the provisions of the Act, in this:

That the additional award of \$750.00 on account of a large white spot across the pupil of the eyeball resembling a cataract, is without, beyond, and in contravention of the provisions of said Act; that the said large white spot across the pupil of the eyeball is not a serious facial or head disfigurement as said terms are used in the provisions of said Act; that the injury to the eye is fully compensated for according to the provisions of said Act by the award of one hundred and forty weeks of compensation as and for the permanent partial disability caused by [4] said injury to the eye; that the additional award for the white spot on the eyeball is a double recovery for the same injury; that by the provisions of said Act the loss of vision of an eye is the same as the loss of the member, and the loss of use of the eye is the same as the loss of the member, and the award is therefore in effect, a double recovery for the same disability, and contrary to the provisions of said Act; that



said award is without and beyond the power and jurisdiction of said Deputy Commissioner.

### IX.

That the said compensation order and award of compensation *order and award of compensation* insofar as it awards an additional amount for a white spot on the eyeball, is not in accordance with law, and is contrary to the said Act, and the same should be suspended and set aside; that less than thirty days have elapsed since the date of entry of said order, and that the libelants have no plain, speedy or adequate remedy at law.

### X.

That if libelants are compelled to pay said additional compensation as provided by said award, they will suffer irreparable damage; that if libelants are required to pay said compensation prior to the final determination of this action, it will allow respondent Young to disperse said fund prior to the determination thereof, and if this action should be determined in favor of libelants herein and the award set aside, libelants would have no remedy in law or in equity for the recovery of said payments of compensation so made in pursuance of said order; that in order to prevent irreparable damage to libelants it is necessary that said award of \$750.00 in a lump sum additional compensation, be stayed pending the outcome of the above-entitled action and the libelants are entitled to have said Deputy Commissioner restrained from enforcing

the payment of said award pending the outcome of said action. [5]

Wherefore, libelants pray as follows:

1. That respondent Warren H. Pillsbury as Deputy Commissioner, be ordered to certify to this court, his proceedings, findings and determination, and to certify the record of the proceedings, testimony and evidence, submitted at the hearing before him upon which the amended compensation order and award, dated February 12th 1943, was based.

2. That a mandatory temporary injunction issue herein restraining the enforcement of said compensation order and award of compensation of the lump sum payment of \$750.00 additional compensation, and that the payment of said amount required to be paid by libelants to respondent David M. Young, pursuant to the terms of said decree be entered by the court enjoining said Warren H. Pillsbury as Deputy Commissioner from enforcing the said payment as required by said award, and for such other, further and different relief as to the court may seem equitable and just.

3. That a time be fixed by the court for the hearing of this libel, and that the court proceed to hear the said cause de novo; that the respondents be required to appear at said hearing, and show cause if any they have, why a mandatory injunction should not issue herein suspending and setting aside the enforcement of said compensation order and award of compensation insofar as it awards the additional compensation of a lump sum of \$750.00

for alleged facial and head disfigurement; that the court proceed to take such evidence as is produced by the parties for the full consideration of the case de novo.

4. That a decree be entered adjudging said amended compensation order and award of compensation dated February 12th, 1943, a copy of which is attached hereto and made a part hereof, as Exhibit "B", to be unlawful and contrary to the provisions of said Longshoremen's and Harbor Workmen's Compensation Act, and directing that said amended compensation order and award of compensation be [6] suspended, annulled, vacated and set aside, and its enforcement enjoined insofar as it purports to make the award of compensation for serious facial and head disfigurement in the amount of \$750.00 in a lump sum, and for such other, further and different relief as to the court may seem equitable and just.

R. P. WISECARVER,

Proctor for Libelants.

R. P. Wisecarver

315 Montgomery Street

San Francisco, California.

Garfield 3740

United States of America,

State of California,

City and County of San Francisco—ss.

Otto Zeus, being first duly sworn, deposes and says: that he is an officer of The Travelers Insurance Company, one of the libelants in the above-



entitled action, to-wit: the Associate Manager thereof, and that as such he is authorized to verify the foregoing libel for review of compensation order; that he has read said libel and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated upon information or belief, and that as to such matters he believes it to be true.

OTTO ZEUS

Subscribed and sworn to before me this 4 day of March, 1943.

[Seal of the Notary]

ALICE C. MORSE,

Notary Public in and for the City and County of  
San Francisco, State of California. [7]

EXHIBIT A

United States Employees' Compensation Commission,  
Before Warren H. Pillsbury, Deputy  
Commissioner, 13th Compensation District.

Case No. 2983-2

Claim No. 1780

DAVID M. YOUNG,

Claimant,

vs.

L. S. CASE COMPANY,

Employer,

TRAVELERS INSURANCE COMPANY,

Insurance Carrier.

TRANSCRIPT OF TESTIMONY AT HEARING

Pursuant to notice, this matter was heard before Warren H. Pillsbury, Deputy Commissioner, United States Employees' Compensation Commission, at the offices of the Commission, at Four Seventeen Market Street, San Francisco, California, on Monday, the 28th day of December, 1942, at 2:30 P. M.

Appearances:

Claimant, present in person.

Defendants, represented by R. P. Wisecarver, attorney-at-law.

Anita Smith, Reporter (Substituting for Mildred McColgan). [8]

Mr. Pillsbury: Hearing on claim for compensation, filed under the following circumstances:

Claimant received an injury in the course of his employment with defendant on October 1, 1941, which resulted in ulcer of the right eye.

Compensation was paid for temporary disability without award. Thereafter, after conference with the parties, I gave them informally my estimate of further compensation due for total loss of the sight of the eye, namely 140 weeks, at \$25.00 a week, beginning February 19, 1942. I understand that this rating has been accepted and payments are being made under it. However, I note in that rating that the condition of the eye was such that the impairment was much more visible than in the case of a glass eye, and called the attention of the parties to the possibility that claimant might be entitled to an additional allowance for serious facial disfigurement. As compensation is being paid, I did not hasten the development of this question, but have corresponded with defendants' attorney and with the Chief Counsel of the Commission, and received various citations of authorities upon this question of possible allowance for disfigurement.

The case came up on my call-up system recently and at an informal conference it appeared that an agreement could not be reached without award on this question. The claim was therefore taken and the claim now comes on regularly for hearing. [9]

Mr. Wisecarver, are you satisfied with the statement of the situation I have just made?

Mr. Wisecarver: Yes, that is substantially as I understand it.

Mr. Pillsbury: You agree that he is entitled to

compensation at \$25.00 a week for an injury occurring October 1, 1941, the period of temporary disability being to February 19, 1942 and thereafter for 140 weeks at \$25.00 a week for permanent loss of sight?

Mr. Wisecarver: I haven't computed the 140, but I think that is correct. In principle, that is correct, yes.

Mr. Pillsbury: And compensation has been paid to date for those two periods?

Mr. Wisecarver: I assume so. Hasn't it?

The Claimant: Yes.

Mr. Pillsbury: And was the temporary disability continuous from the date of injury to February 19th?

The Claimant: Yes.

Mr. Pillsbury: You were under compensation, were you, the whole time, Mr. Young, from October 1st to February 19th?

The Claimant: Yes.

Mr. Pillsbury: So the only question is whether the law authorizes an additional allowance for disfigurement.

Mr. Wisecarver: Yes. According to the statement that you made once before, that in looking at the eye you could see [10] there is some whiteness of the eyeball.

Mr. Pillsbury: In looking at him across the table, I notice a large white spot over the center of the right eye obscuring the pupil, which gives to any one seeing him immediate information that the right eye is blind.

Mr. Wisecarver: In that connection, for the purpose of the record, Mr. Pillsbury, is it conceded that in looking at the application, that the eye itself—that is, the orifice—is normal and what you are referring to refers only to the pupil of the eye itself?

Mr. Pillsbury: That's right. It is the appearance commonly seen where a large cataract completely obscures the pupil.

Mr. Wisecarver: It having to do only with the eyeball and not with the orifice or with any portion of the face itself.

Mr. Pillsbury: That is correct. Reference may be made to file for the authorities submitted by Mr. Wisecarver on this question and the authorities cited by the Commission's Chief Counsel.

Anything else?

Mr. Wisecarver: For the purpose of the record, do you think it would be of any avail to have that described technically by a doctor, or is it admitted that is the statement?

Mr. Pillsbury: I don't think so. Are you satisfied with [11] the description I just gave of the appearance of the eye, Mr. Young?

The Claimant: Yes, sir.

Mr. Wisecarver: And so far as the movement of the eye is concerned, it moves about as you look one way or the other with the other eye, without pain to you?

The Claimant: Oh, yes, there is no pain whatever.



Mr. Wisecarver: You have no pain with the eye, except that you don't see?

The Claimant: No.

Mr. Pillsbury: I notice you are blinking some with the eye. Why is that?

The Claimant: It throws a shadow. When I keep this eye closed, I see much plainer; but when I keep both eyes open it throws a shadow. I have two pairs of glasses, one long distance and one for reading.

Mr. Pillsbury: Both glasses are clear, are they?

The Claimant: I think they are.

Mr. Pillsbury: You don't wear a black patch, do you over the injured eye?

The Claimant: No.

Mr. Pillsbury: Or a black glass?

The Claimant: No. I can only just see through the one glass, but it is the only way I have been able to work.

Mr. Wisecarver: You can see same out of the injured eye, [12] can you?

The Claimant: Oh, no. That's the reason there is a shadow.

Mr. Wisecarver: You get the impression there is a shadow?

The Claimant: Yes, and it makes it bad to see that way. Dr. Irvine in the County Hospital told me I would never be able to see again.

Mr. Wisecarver: I was just wondering if it would be well to have a technical description of the eye?

Mr. Pillsbury: I don't think so, because the question of extent of facial disfigurement is more a question for laymen. If you want to file a photograph that fairly shows it——

Mr. Wisecarver: So long as it is conceded the face itself is not involved, it is purely the eyeball. Is that conceded, Mr. Young?

The Claimant: Yes.

Mr. Pillsbury: As I see him, the eyeball moves naturally and the eyelids are somewhat drawn together—the eyelids are not held as widely apart as for the good eye.

The Claimant: I couldn't open this eye for two or three months, you know. It had some stitches in it.

Mr. Pillsbury: The only items of disfigurement are the narrowness between the eyelids when open and the white spot on the pupil.

Mr. Wisecarver: I must confess I don't notice that. If [13] there is any difference it is very slight, because you can see the eyeball in both eyes.

Mr. Pillsbury: But not the pupil.

Mr. Wisecarver: But it opens the width of the pupil in both eyes approximately. Even in the good eye, it doesn't open quite wide enough to see the full colored portion of the good eye.

Mr. Pillsbury: By "pupil", I mean the dark spot in the center of the eye through which the



rays of light pass through the retina. The margins of that seem to be obscured by the scar tissue.

Mr. Wisecarver: Oh, yes, on the eyeball itself. I was thinking of the width of the eye there itself.

Mr. Pillsbury: Hearing closed?

Mr. Wisecarver: I think so.

Mr. Pillsbury: Hearing closed.

I hereby certify that the foregoing is a correct transcript of the testimony and proceedings taken in the above matter at the hearing held on December 28th, 1942.

(Signed) ANITA SMITH,

Reporter.

(Substituting for Mildred  
McColgan) [14]

## EXHIBIT B

United States Employees' Compensation  
Commission

## 13th Compensation District

In the matter of the claim for compensation under  
the Longshoremen's and Harbor Workers'  
Compensation Act.

DAVID M. YOUNG,

Claimant,

against

L. S. CASE COMPANY,

Employer,

THE TRAVELERS INSURANCE COMPANY,  
Insurance Carrier.CORRECTED COMPENSATION ORDER  
AWARD OF COMPENSATION CASE No. 2983-2

Claim No. 1780

Such investigation in respect to the above entitled claim having been made as is considered necessary and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following:

## FINDINGS OF FACT

That on the 1st day of October, 1941, the claimant above named was in the employ of the employer above named at Oakland in the State of California in the 13th Compensation District, established under

the provisions of the longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by The Travelers Insurance Company;

That on said day claimant herein, while performing service for the employer as a carpenter on board the S.S. "West Portal", then undergoing repairs at Oakland, California, sustained personal injury occurring in the course of and arising out of his employment and resulting in disability as follows: While at work, a foreign body entered his right eye, causing an ulcer thereof and resulting in permanent disability and serious facial disfigurement;

That notice of injury was given within thirty days after the date of such injury to the Deputy Commissioner and to the employer; [15]

That the employer furnished claimant with medical treatment, etc., in accordance with Section 7(a) of the said Act;

That the average annual earnings of the claimant herein at the time of his injury exceeded the maximum of \$1950.00 prescribed by said Act;

That as the result of the injury sustained the claimant was wholly disabled from the date thereof to February 19, 1942, and he is entitled to 20-1/7 weeks compensation, \$25.00 a week, for such disability, amounting to \$503.57, which has been paid;

That claimant's disability reached a permanent stage on February 19, 1942. That by reason of said injury claimant has sustained permanent partial disability consisting in loss of over 80 per cent of

the sight of said eye, entitling him to compensation at \$25.00 a week for 140 weeks beginning with said February 19, 1942. That compensation has been paid thereon to the date of the last hearing, December 28, 1942, a period of 44-4/7 weeks, leaving 95-3/7 weekly payments still due claimant;

That by reason of said injury claimant has sustained, in addition to said loss of sight, serious facial and head disfigurement consisting in a large white spot across the pupil of said eye resembling a cataract and some narrowing of the aperture between the upper and lower eyelids of said eye. That just and equitable compensation therefor is \$750.00, which is payable forthwith;

Upon the foregoing facts the Deputy Commissioner makes the following:

### AWARD

That the employer, L. S. Case Company, and the insurance carrier The Travelers Insurance Company, shall pay to the claimant compensation as follows:

(1) To claimant the sum of \$750.00 forthwith for serious facial and head disfigurement;

(2) To claimant the sum of \$25.00 a week for 95-3/7 weeks commencing with December 28, 1942.

Given under my hand at San Francisco, California, this 12th day of February, 1943.

WARREN H. PILLSBURY

Deputy Commissioner

13th Compensation District

[Endorsed]: Filed Mar. 4, 1944. [16]

[Title of District Court and Cause.]

EXCEPTIONS OF RESPONDENT WARREN  
H. PILLSBURY TO LIBEL IN PER-  
SONAM TO ENJOIN COMPENSATION  
ORDER

Now comes Respondent Warren H. Pillsbury and files his exceptions to the libel on file herein, and for grounds thereof, alleges:

I.

That the libel on file herein be dismissed for want of allegations showing that libelants are entitled to the [17] relief prayed for.

II.

That the libel on file herein be dismissed in that

(1) It does not appear from the face of said libel in what manner the Findings of Fact heretofore made by Respondent Pillsbury on February 12, 1943, are not supported by substantial evidence;

(2) It does not appear from the face of said libel in what manner the compensation award made by Respondent Pillsbury on the 12th of February, 1943, is not supported by substantial evidence;

(3) It does not appear from the face of the said libel in what manner the compensation award made by Respondent Pillsbury on the 12th day of February, 1943, is contrary to law.

Wherefore, Respondent Pillsbury prays that his exceptions to said libel be granted and that said



libel be dismissed and for such other relief that he may be entitled to receive in the premises.

FRANK J. HENNESSY,  
United States Attorney,  
Attorney for Respondent.

(Admission of Service.)

[Endorsed]: Filed June 3, 1943. [18]

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[Title of District Court and Cause.]

R. P. WISECARVER,  
315 Montgomery Street,  
San Francisco, California,  
Attorney for Libelants.

FRANK J. HENNESSY,  
United States Attorney,  
United States Post Office and Court House  
Building,  
Seventh & Mission Streets,  
San Francisco, California,  
Attorney for Respondent.

## OPINION

Goodman, District Judge. [19]

This is a libel for review of a compensation order and for injunction suspending and setting aside an award under Longshoremen's and Harbor Worker's Compensation Act, 44 Stat. 1424, 33 U.S.C.A. 901,

et seq. and involves construction of the compensation provisions of the Act. (33 U.S.C.A. 908).

Respondent Young lost the sight of his right eye because of the entry of a foreign body therein while employed on board ship. Respondent Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission, awarded compensation for permanent partial disability, resulting from loss of sight of Respondent Young's right eye, under subdivision (c) (5) of Section 908, 33 U.S.C.A. In addition he awarded the sum of \$750.00, for serious facial disfigurement, under subdivision (c) (20) of Section 908.

Upon the issue of facial disfigurement, the Deputy Commissioner found: "that by reason of said injury claimant has sustained, in addition to said loss of sight, serious facial and head disfigurement consisting in a large white spot across the pupil of the eye resembling a cataract and some narrowing of the aperture between the upper and lower eyelids of said eye."

Respondent Young's employer and its insurance carrier, as libelants, join in the prayer that the Deputy Commissioner's award of \$750.00 under subdivision (c) (20) of Section 908 be set aside upon the ground that the award constitutes a double recovery, inasmuch as for the same injury and loss of the sight of the eye, respondent Young was awarded both disability and disfigurement damages. [20]

Subdivision (c) (20) of Section 908 provides:

"Disfigurement: The deputy commissioner



shall award proper and equitable compensation for serious facial and head disfigurement not to exceed \$3500.00.”

It is contended by libelants that the intent of subdivision (c) (20) Section 908 is to provide compensation in the case of head or facial disfigurement only when there is no compensation allowed for injury to the same member of the head; that here the disability compensation allowed for the loss of the use of the eye ball includes any damage to the eye ball itself and excludes any other award for it.

The sufficiency of the evidence to sustain the award under subdivision (c) (20) of Section 908 is not questioned; therefore the finding that respondent Young did suffer severe facial or head disfigurement is final and conclusive and not subject to review in this court. *South Chicago Coal & Dock Co. v. Bassett*, Deputy Commissioner, 309 U. S. 251, at page 258; *Luckenbach S.S. Co. v. Norton*, Deputy Commissioner, (3 Cir.) 96 Fed. (2d) 764.

Both sides agree that the sole question is as to the scope of Section 908 Subdivision (c) (20) of the Act. It is claimed that there is no reported decision of the Federal Courts in point.

The Longshoremen's and Harbor Worker's Compensation Act was modeled after the New York law. The deputy Commissioner has cited several New York State lower court decisions wherein compensation for facial disfigurement was allowed concurrently with disability compensation for loss of use of the same member of the head. Some weight

may be given to the New York decisions because of the recognized rule of construction that the adoption of a statute of another jurisdiction carries with it the construction placed [21] upon it prior to its adoption. In *Marshall, Deputy Commissioner v. Andrew Mahony Co.* (9 Cir.) 56 Fed. (2d) 74, the Court, after referring to the fact that the Longshoremen's and Harbor Worker's Compensation Act was adopted from the Workmen's Compensation law of New York (Cons. laws New York, c. 67) stated "that in so adopting the act the Congress intended to adopt the construction theretofore placed upon it by the courts of the state of its enactment." To the same effect, *Luckenbach S. S. Co. v. Marshall* (9 Cir.) 49 Fed. (2d) 625; *Bethlehem Ship Building Corporation v. Monahan*, (1 Cir.) 54 Fed. (2d) 349.

More persuasive, however, is the argument that sound and logical interpretation of the statute itself supports the Deputy Commissioner's decision. Subdivision (c) (20) of Section 908 is one of a series of enumerated classifications within section 908 (c), wherein compensation for partial disabilities is to be awarded. Each of the enumerated partial disabilities, e. g. loss of arm, loss of leg, loss of hand, loss of eye, etc. cannot reasonably be considered as exclusive of any other, since an employee might lose the use of an arm and of a leg and still receive compensation severally for each disability. Section 908 (c) (22) specifically so provides. Further, the same subdivision allows such awards to run consecutively where permanent partial disabili-

ity results from the loss of use of separate members of the body.

In order to determine the real intent and purpose of the Congress, the whole section must be considered. As was said in *Marshall v. Mahony*, *supra*: "to arrive at its proper meaning and application, Section 10 (the section there in question) must be taken in its entirety and its [22] true meaning be ascertained by giving due weight and consideration to all parts of the section in the light of the general aims and objects of the statute taken as a whole." (Comment in parenthesis supplied.)

The framers of the statute obviously considered facial disfigurement as an element of damage separate and apart from disability resulting from the various classified types of injuries. In my opinion, it was not intended that an employee should be denied an award for disfigurement merely because his disability and disfigurement, by happenstance, are concurrent. Otherwise the inconsistent result might be reached whereby an employee would receive compensation for the loss of an eye and damages for the disfigurement of an ear, but nothing for disfigurement if the two misfortunes occurred in the same member of the head. Clearly, it was intended to allow compensation for the handicaps caused by personal unsightliness, separately and in addition to the disability causing loss of use of a member of the body or head.

The Longshoremen's and Harbor Worker's Compensation Act is a remedial statute and hence must be liberally construed. *Baltimore & Philadelphia*

S. S. Co. v. Norton, 284 U. S. 408; De Wold v. Baltimore & Ohio R. R. Co. (4 Cir.) 71 Fed. (2d) 810; Travelers Ins. Co. v. Branham, (4 Cir.) 136 Fed. (2d) 873.

The exceptions to the libel are sustained and the libel is dismissed.

Dated: September 24, 1943.

[Endorsed]: Filed Sept. 24, 1943. [23]

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[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above entitled proceeding came on regularly to be heard on the 30th day of October, 1943, R. P. Wisecarver, Esq., appearing for libelants, and James T. Davis, Esq., Assistant United States Attorney appearing for respondent Warren H. Pillsbury, Deputy Commissioner for the 13th Compensation District, under the Longshoremen's and Harbor Workers' Compensation Act, the hearing being had upon the libel incorporating the entire record and transcript of the hearings before the respondent in the compensation matter [24] herein complained against by libelants and upon the exceptions of the respondent herein to said libel and briefs, and the matter having been submitted for consideration and decision, now, after due deliberation, the court finds generally in favor of the respondent and against the



libelants on the issue raised by the respective pleadings and further finds as follows:

## FINDINGS OF FACT

### I.

That on the first day of October, 1941, the claimant David M. Young, was in the employ of the L. S. Case Company at Oakland, in the State of California, in the 13th Compensation District established under the provisions of the Longshoremen's and Harbor Workers' Act, and that the liability of the employer for compensation under said Act was insured by The Travelers Insurance Company;

### II.

That the said claimant, David M. Young, while performing service for the employer as a carpenter on board the SS West Portal, then undergoing repairs at Oakland, California, sustained personal injury occurring in the course of and arising out of his employment and resulting in disability as follows: While at work a foreign body entered his right eye causing an ulcer thereof and resulting in permanent disability and serious facial disfigurement; [25]

### III.

On December 16, 1942 a claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act was filed with the Respondent Deputy Commissioner, and hearing had in conformity with law. On February 12, 1943 said Respondent Deputy Commissioner made a compensation

award in favor of said David M. Young as claimant, finding that the claimant's disability reached a permanent stage on February 19, 1942, and that by reason of said injury claimant sustained permanent partial disability consisting in the loss of over 80 percent of the sight of his eye entitling him to compensation at \$25.00 a week for 140 weeks beginning with said February 19, 1942. Respondent Commissioner further found that by reason of said injury claimant sustained in addition to said loss of sight serious facial and head disfigurement consisting in a large white spot across the pupil of said eye resembling a cataract and some narrowing of the aperture between the upper and lower eyelids of said eye, and that just and equitable compensation thereof was \$750.00.

## CONCLUSIONS OF LAW

### I.

The compensation order-award of February 12, 1943, Case No. 2983-2, Claim No. 1780 before the United States Employees Compensation Commission for the Thirteenth Compensation District, (in which David M. Young is claimant and L. S. Case Company, libelant herein, is the employer, and The Travelers Insurance Company, a corporation, libel- [26] ant herein, is the insurance carrier), is in accordance with law and is supported by substantial evidence.

## II.

That claimant, David M. Young, by reason of said injury sustained permanent partial disability consisting in loss of over 80 percent of the sight of his right eye and in addition to said loss of sight sustained serious facial and head disfigurement.

## III.

That respondent is entitled to have the compensation order-award of February 12, 1943, affirmed, the Motion for an Injunction denied and the libel dismissed.

Dated: This 2nd day of December, 1943.

(Sgd.) LOUIS E. GOODMAN,  
United States District Judge.

Approved as to form as provided in Rule 22.

R. P. WISECARVER,  
Attorney for Libelants.

[Endorsed]: Filed Dec. 3, 1943. [27]



In the United States District Court for the Northern District of California, Northern Division.

No.23795-G

L. S. CASE, doing business as L. S. Case Company,  
and TRAVELERS INSURANCE COMPANY, a corporation,

Libelant,

vs.

WARREN H. PILLSBURY, Deputy Commissioner of United States Employees' Compensation Commission, for the 13th Compensation District, under the Longshoremen's and Harbor Workers' Compensation Act, and DAVID M. YOUNG.

Respondents.

### DECREE

This cause came on regularly to be heard in the above entitled Court on the 30th day of October, 1943, the Honorable Louis E. Goodman, United States District Judge, presiding, at which time this matter was submitted on the libel on file herein and Respondent's Exceptions to said libel and upon briefs filed by both parties, and upon a certified copy of the transcript of the proceedings before [28] Respondent Pillsbury sitting as Deputy Commissioner of the United States Employees' Compensation Commission for the 13th Compensation District, and upon Libelant's Motion for a Mandatory Injunction, and the Court having considered the law and the evidence, and having made its Findings of Fact and Conclusions of Law herein,

Now, Therefore, It Is Ordered, Adjudged and Decreed as follows:

That the libel heretofore filed on behalf of libelant above named be and the same is hereby dismissed without leave to amend;

That the Motion for Mandatory Injunction heretofore filed on behalf of the libelant above named be and the same is hereby denied;

That the compensation award of Respondent dated and filed the 12th day of February, 1943 directing Libelant above named to pay David M. Young as claimant the sum of \$750.00 forthwith for serious facial and head disfigurement, and the sum of \$25 a week for 95-3/7 weeks commencing December 28, 1942, be and the same is hereby affirmed;

That each party will pay its own costs.

Done in Open Court this 18th day of February, 1944.

LOUIS E. GOODMAN,  
United States District Judge.

Approved as to form as provided in Rule 22.

R. P. WISECARVER.

Entered in Vol. 34 Judg. and Decrees at Page 226.

[Endorsed]: Filed Feb. 18, 1944. [29]

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL  
[30]

The Libelants, L. S. Case, doing business as L. S. Case Company and Travelers Insurance Company, a corporation, each believing itself aggrieved by the Decree of the Court made and entered on the 18th day of February, 1944, wherein and whereby the libel and bill of complaint for injunction was denied herein, hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors, which is filed herewith and your petitioners respectfully pray that this appeal may be allowed, that a citation be issued directed to the above-named respondents, Warren H. Pillsbury and David M. Young, as provided by law, and that a transcript of record and proceedings upon which said decree was based, be duly authenticated and sent to the Circuit Court of Appeals for the Ninth Circuit.

L. S. CASE, doing business as  
L. S. Case Company, and  
TRAVELERS INSURANCE  
COMPANY, a corporation,  
By R. P. WISECARVER  
Their Proctor.

Receipt of copy of the above Petition for allowance of appeal is hereby acknowledged this 17th day of March, 1944.

FRANK J. HENNESSY

Per T.S.

Proctor for Respondents.

[Endorsed]: Filed Mar. 17, 1944. [31]

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[Title of District Court and Cause.]

### ORDER ALLOWING APPEAL [32]

The Petition of the libelants in the above-entitled cause for the allowance of the appeal to the United States Circuit Court of Appeals for the Ninth Circuit is hereby allowed, the appellants to file a bond in the sum of Two Hundred Fifty Dollars, to be approved by the undersigned Judge and conditioned as a bond for costs of appeal in said Circuit Court of Appeals.

It is further ordered that a copy of this allowance of appeal, certified by the Clerk to be such, may be served upon the Attorney and Proctor for respondents in lieu of personal service.

Done this 17th day of March, 1944.

A. F. ST. SURE

Judge

Receipt of a certified copy of the foregoing order allowing appeal is acknowledged this 17th day of March, 1944.

FRANK J. HENNESSY

Per T.S.

Proctor for Respondents.

[Endorsed]: Filed Mar. 17, 1944. [33]

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[Title of District Court and Cause.]

COST BOND ON APPEAL [34]

Know All Men by These Presents, that Globe Indemnity Company, a corporation, duly organized and existing under the laws of the State of New York, and duly authorized and qualified to do business within the State of California, for the purpose of making, guaranteeing or becoming surety upon bonds or undertakings required or authorized by the laws of the United States of America, or of the State of California, is held and firmly bound unto Warren H. Pillsbury, as Deputy Commissioner of the United States Employees' Compensation Commission for the 13th Compensation District, and unto his successors in such office, and unto David M. Young, in the penal sum of Two Hundred Fifty (\$250) Dollars for the payment of which, well and truly to be made unto the said respondents, or their said successors, and personal representatives respectively, the said Globe Indemnity Company hereby binds itself, its successors and assigns, firmly by these presents.



Signed and sealed at San Francisco, California, this 17th day of March, A. D. 1944.

The condition of the foregoing obligation and undertaking is such, that whereas the above named libelants, L. S. Case doing business as L. S. Case Company and Travelers Insurance Company, a corporation, in the above entitled suit have appealed and are about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and decree made and entered in the above entitled court and cause, on February 18th, 1944, ordering and decreeing a dismissal of said libel; and dismissing the same at the cost of both parties;

Now, Therefore, if the said L. S. Case doing business as L. S. Case Company and Travelers Insurance Company, a corporation, shall prosecute their said appeal to effect and answer all costs which may be awarded or adjudged against them or either of them, if they fail to make good their said appeal, then this obligation shall be void; otherwise to remain in full force and effect, and [35] in case of any breach of said condition, it is expressly agreed that the said District Court may, upon notice to this obligor of not less than ten days, proceed summarily in the above entitled suit to ascertain the amount which it is bound to pay on account of such breach and render judgment against this obligator therefor and award execution thereon.

In Witness Whereof, these presents have been executed by the attorney in fact of said obligator thereunto duly authorized and the seal of said

obligator affixed, upon the day and year hereinabove written.

GLOBE INDEMNITY COM-  
PANY

By A. J. CLEFFI

Its Attorney in Fact.

Premium Charge for this Bond is \$10.00 per annum.

The foregoing bond is hereby approved this 17th day of March, 1944.

A. F. ST. SURE

United States District Judge.

[36]

State of California,

City and County of San Francisco—ss.

On the 17th day of March, before me Thomas A. Dougherty, a Notary Public in and for the City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared A. J. Cleffi, Attorney in Fact of the Globe Indemnity Company, a corporation, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same and also known to me to be the person whose name is subscribed to the within instrument as Attorney in Fact of said corporation, and he acknowledged to me that he subscribed the name of said Globe Indemnity Company thereto as principal and his own name as Attorney in Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco the day and year first above written.

THOMAS A. DOUGHERTY

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires Aug. 10th, 1947.

Received copy of the within Cost Bond this 17th day of March, 1944.

FRANK J. HENNESSY

Per T.S.

Proctor for Respondents.

[Endorsed]: Filed Mar. 7, 1944. [37]

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[Title of District Court and Cause.]

### ASSIGNMENT OF ERRORS [38]

Now come the libelants in the above entitled cause, by their proctor and in connection with their petition for appeal, assign the following errors in the decree of this court entered February 18th, 1944.

#### I.

That the United States District Court for the Northern District of California erred in making and entering the decree dated February 18th, 1944 denying the libelants application for mandatory injunction to restrain the order for compensation of respondent, Warren H. Pillsbury, as prayed in its libel.

## II.

That the said Court erred in sustaining the respondent, Warren H. Pillsbury's exceptions to libelants libel and confirming the compensation order to respondent David M. Young, made and filed on the 12th day of February, 1943, and in denying the motion for injunction filed by libelants in said action.

## III.

That the said Court erred in refusing to enter a decree herein declaring that said compensation order of the respondent Warren H. Pillsbury described in the libelants' complaint, was not in accordance with the law, and that the same be vacated and set aside.

## IV.

That the said Court erred in affirming the compensation award of respondent Warren H. Pillsbury, dated and filed the 12th day of February, 1943, directing libelants above named to pay David M. Young, as claimant, the sum of Seven Hundred Fifty (\$750) Dollars forthwith for serious facial and head disfigurement, and the sum of Twenty-five (\$25) Dollars a week for 95  $\frac{3}{7}$  weeks, commencing December 28th, 1942.

## IVa.

That the said Court erred in finding and decreeing that respondent David M. Young sustained a personal injury from a foreign body entering his right eye [39] causing an ulcer thereof and resulting in permanent disability and serious facial disfigurement, within the meaning of the terms per-



manent disability and serious facial disfigurement, as said terms are used and defined in the Longshoremen's and Harbor Workmen's Compensation Act.

V.

That said Court erred in finding and decreeing that said David M. Young sustained a loss of over 80% of the sight of his right eye and in addition to said loss of sight, sustained serious facial and head disfigurement, as said terms loss of sight and serious facial and head disfigurement are defined and used in the Longshoremen's and Harbor Workmen's Compensation Act.

VI.

That said Court erred in failing to find and decree that respondent David M. Young was fully compensated for his injury arising out of and in the course of his employment, when he was compensated for the total loss of use of the eye, and that he was not entitled to additional compensation for a blemish on the surface of the eyeball, pursuant to the provisions of the Longshoremen's and Harbor Workmen's Compensation Act.

R. P. WISECARVER

Proctor for Libelants.

Receipt of copy of the above Assignment of Errors is acknowledged this 17th day of March, 1944.

FRANK J. HENNESSY

Per T.S.

Proctor for Respondents.

[Endorsed]: Filed Mar. 17, 1944. [40]



[Title of District Court and Cause.]

APOSTLES ON APPEAL [41]

To the Clerk of the above-entitled Court:

You will please make up, certify, and file a transcript of the record in the above-entitled cause upon the appeal thereof to the Circuit Court of Appeals for the Ninth Circuit, and incorporate therein the following:

Libel for review of compensation order and for injunction suspending and setting aside award under Longshoremen's and Harbor Workers' Compensation Act, and including therein Exhibit A, being a transcript of testimony before Warren H. Pillsbury, Deputy Commissioner, and Exhibit B, being the corrected compensation order, award of compensation, Case No. 2983-2, Claim No. 1780.

Exceptions of respondent Warren H. Pillsbury to Libel.

Opinion by Goodman, District Judge, dated February 24, 1943.

Findings of Fact and Conclusions of law by Goodman, Judge.

Decree, dated February 18th, 1944, by Goodman, Judge.

The following papers filed on or about March 17th, 1944:

Petition for allowance of appeal.

Order allowing appeal.

Cost bond on appeal.

Citation and admission of service.

Assignment of errors.

Clerk's certificate to transcript of record.

Apostles on Appeal.

Dated: March 17, 1944.

R. P. WISECARVER

Proctor for Libelants

Received copy of the within Apostles on appeal  
March 17th, 1944.

FRANK J. HENNESSY

Per T.S.

Proctor for Respondents.

[Endorsed]: Filed Mar. 17, 1944. [42]

[Title of District Court and Cause.]

TRANSCRIPT OF RECORD

United States Employees' Compensation  
Commission

13th Compensation District

In the matter of the claim for compensation under  
Longshoremen's and Harbor Workers' Com-  
pensation Act

Case No. 2983-2

Claim No. 1780

DAVID M. YOUNG,

Claimant,

against

L. S. CASE COMPANY,

Employer.

THE TRAVELERS INSURANCE COMPANY,  
Insurance Carrier.

CERTIFICATION

This is to certify that I am the duly appointed, qualified and acting Deputy Commissioner of the United States Employees' Compensation Commission under the Longshoremen's and Harbor Workers' Compensation Act, for the Thirteenth Compensation District, comprising the State of California and other portions of the United States:

That there has recently been pending before me as said Deputy Commissioner, a claim for compen-

sation under said Act of David M. Young against L. S. Case Company, employer, and The Travelers Insurance Company, insurance carrier, my file No. 2983-2.

That the attached are originals or true and correct copies of pleading, transcripts of testimony, and exhibits in said file, as listed below, being a copy of the entire file therein as far as relevant to a review of the above proceedings:

1. US-203, Copy of Employee's Claim for Compensation [43]
2. Transcript of Testimony of December 28, 1943
3. Corrected Compensation Order, Award of Compensation, dated February 12, 1943.

Given under my hand at San Francisco, California, this 13th day of March, 1943.

WARREN H. PILLSBURY

Deputy Commissioner

13th Compensation District

[44]

United States Employees' Compensation  
Commission

Office of Deputy Commissioner Warren H. Pillsbury,  
13th Dist. Administering Longshoremen's and Harbor Workers' Compensation Act  
Leave This Space Blank  
Case No. 2983-2  
Insurance Carrier's  
No. 40

Employee's Claim for Compensation  
(To be filed with the Deputy Commissioner in  
accordance with sections 13 and 19 of the law.)

## Injured

## Person

1. Name of employee David M. Young  
Employee's Check No. ....
2. Address: Street and No. 319 Third Street  
City or town San Francisco, Calif.
3. Sex Male Age 60 Married, single, widowed  
Single
4. Do you speak English? Yes  
Nationality Scotch-American
5. State regular occupation Shipwright
6. What were you doing when injured? Putting  
down linoleum on captain's cabin
7. (a) Wages or average earnings per day, \$11.00  
(Include overtime, board, rent, and other al-  
lowances.) (b) Per week, \$.... (c) Were you  
employed elsewhere during week in which you  
were injured? ..... (d) If so, state where and  
when .....
8. Were you paid full wages for day of accident?  
No. [45]

## Employer

- 9 Employer L. S. Case Company.
10. Office address: Street and No. 7th & Daggett  
Sts. City or town San Francisco, Calif.
11. Nature of business Ship Servicing

## The

## Injury

12. Place where injury occurred on board S.S.  
"West Portal, in Oakland, Pier 7
13. Name of foreman Glen T. Gray



14. Date of accident or first illness, the 1st day of October, 1941, at . . . . o'clock . . M.
15. How did accident happen or how was occupational disease caused? While putting down linoleum on floor, some sand and white lead got into right eye.

Nature and Effect  
of Injury

16. State fully nature or injury or occupational disease:  
(1) Loss of sight, right eye. (2) Serious facial and head disfigurement.
17. On what date did you stop work because of injury? Possibly the next day, 192..
18. Have you returned to work? (Yes or No.)  
Yes. If "yes", on what date? Intermittently, 192..
19. Does injury keep you from work? (Yes or No.) No. Not entirely. Can do some form of work.
20. Have you done any work in period of disability? Yes.
21. Have you received any wages since injury?  
Yes. If so, from and to what date? . . . . .
22. Has injury resulted in amputation? No. If so, describe same . . . . .
23. Did you request your employer to provide medical attendance? Yes. Has he done so? Yes.
24. Attending physician: Name S. F. Boyle & Dr. Carman Address Now in Army

25. Hospital: Name County Hosp. & Dante Hosp.  
Address San Francisco, Calif.

Notice

26. Have you given your employer notice of injury? (Yes or No.) Yes When? Next day, 192..

27. If such notice was given, to whom? .....

28. Was it given orally or in writing? Orally

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

Signed by DAVID M. YOUNG

Claimant.

Mail address 319 Third Street  
San Francisco, Calif.

Dated Filed Dec. 16, 1942 j

Dated: December 16, 1942. [47]

(Here Follows Corrected Compensation Order Award of Compensation Case No. 2983-2 Claim No. 1780 Copied as "Exhibit B" Attached to Libel for Review of Compensation Order and for Injunction Suspending and Setting Aside Award Under Longshoremen's and Harbor Workers' Compensation Act)

(Certificate of Mailing)

(Here Follows a Transcript of Testimony at Hearing Before Warren H. Pillsbury, Deputy Com-

missioner, United States Employees' Compensation Commissioner, December 28, 1942, Copied as "Exhibit A" Attached to Libel for Review, Etc.)

(Endorsed) Filed Mar 30 1944 [48]

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[Title of District Court and Cause.]

COUNTER DESIGNATION OF  
APOSTLES ON APPEAL

To the Clerk of the above entitled Court:

You will please cause to be made up, certified and filed in the above entitled court and cause in addition to the parts of the record already requested by the libelant that part of the transcript of record already requested by the libelant that part of the transcript of record in the above entitled cause as follows:

1. Transcript of the testimony taken before Respondent Deputy Commissioner Warren H. Pillsbury, and any exhibits annexed thereto, particularly "Employees Claim for Compensation" together with Deputy Commissioner's certification thereof;
2. Notice of entry of judgment.

Dated: This 6th day of April, 1944.

FRANK J. HENNESSY

United States Attorney.

(Receipt of Service.)

[Endorsed]: Filed Apr. 7, 1944. [49]

District Court of the United States  
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 49 pages, numbered from 1 to 49, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of L. S. Case, etc., et al., Libelants, vs. Warren H. Pillsbury, etc., et al, Respondents, No. 23795 G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Eight Dollars and Twenty-five Cents (\$8.25) and that the said amount has been paid to me by the Attorney for the appellant herein.

And I Further Certify that annexed hereto is the Original Citation and Admission of Service.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 21st day of April A. D. 1944.

[Seal]

C. W. CALBREATH,  
Clerk.

By E. VAN BUREN,  
Deputy Clerk.

[Title of District Court and Cause.]

### CITATION AND ADMISSION OF SERVICE

The United States of America to the respondents Warren H. Pillsbury, Deputy Commissioner of the Thirteenth Compensation District, under the Longshoremen's and Harbor Workers' Compensation Act, and David M. Young, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals, Ninth Circuit, to be holden at the Post Office Building, in the City and County of San Francisco, State of California, within forty (40) days from the date hereof, pursuant to a petition for appeal filed in the Clerk's office of the District Court of the United States, for the Northern District of California, Southern Division; wherein L. S. Case, doing business as L. S. Case Company, and Travelers Insurance Company, a corporation, are the libelant-appellants and Warren H. Pillsbury, Deputy Commissioner for the 13th Compensation District, under the Longshoremen's and Harbor Workers' Compensation Act, and David M. Young are the respondent-appellees, to show cause, if any there be, why the decree in said petition for appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the City and County of San Francisco, in the District and Circuit aforesaid, this 17th day of March, 1944, and the inde-



pendence of America the One Hundred and Sixty-Eighth year.

A. F. ST. SURE,  
U. S. District Judge for the Northern District of  
California, Southern Division.

Receipt of copy of the within citation and admission of service is hereby acknowledged this 17th day of March, 1944.

FRANK J. HENNESSY

Per T. S.

Proctor and Attorney for  
Respondents.

[Endorsed]: Filed Mar. 17, 1944.

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[Endorsed]: No. 10749. United States Circuit Court of Appeals for the Ninth Circuit. L. S. Case, doing business as L. S. Case Company, and Travelers Insurance Company, a corporation, Appellants, vs. Warren H. Pillsbury, Deputy Commissioner of the Thirteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, and David M. Young, Appellees. Apostles on Appeal. Transcript of Record Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed April 24, 1944.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the Circuit Court of Appeals for the Ninth  
Judicial Circuit of the United States of America

No. 10749

L. S. CASE, doing business as L. S. Case Company,  
and TRAVELERS INSURANCE COMPANY  
a corporation,

Libelants,

vs.

WARREN H. PILLSBURY, Deputy Commis-  
sioner of United States Employees' Compensa-  
tion Commission, for the 13th Compensation  
District, under the Longshoremen's and Harbor  
Workers' Compensation Act, and DAVID M.  
YOUNG,

Respondents.

#### STATEMENT OF POINTS ON APPEAL

Libelants hereby adopt and make a part hereof  
as if incorporated herein as its statement of points  
on appeal those specifications, designations and ob-  
jections present and stated in its Assignment of  
Errors on file herein, copy of which has been here-  
tofore served on Proctor for Respondents.

Dated: April 24th, 1944.

R. P. WISECARVER,  
Proctor for Libelants.

Received copy of the within Statement of Points  
on Appeal May 2, 1944.

FRANK J. HENNESSY,  
Proctor for Respondents.

[Endorsed]: Filed May 2, 1944. Paul P. O'Brien,  
Clerk.